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WRITER'S DIRECT DIAL

March 4, 2010

Via Hand Delivery

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20544

Re: Petition for Waiver of the Network Representation Rule, Section 73.658(i)

Dear Ms. Dortch:

Enclosed please find, on behalf of Mambo, LLC ("Mambo"), a Petition for Waiver of the Network Representation Rule, Section 73.658(i). One original and four copies of the Petition are enclosed.

If any questions should arise during the course of your consideration of this matter, it is respectfully requested that you communicate with this office.

Sincerely,

BROOKS, PIERCE, McLENDON,
HUMHREY & LEONARD, L.L.P.



Stephen Hartzell
Counsel to Mambo, LLC

Enclosures

Before the
Federal Communications Commission
Washington, D.C. 20554

FILED/ACCEPTED

MAR - 5 2010

Federal Communications Commission
Office of the Secretary

In the Matter of:

Mambo, LLC

Petition for Waiver of Section 73.658(i)
of the Commission's Rules

MB Docket No. 10-_____

To: The Chief, Media Bureau

**PETITION FOR WAIVER
OF THE NETWORK REPRESENTATION RULE, SECTION 73.658(i)**

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SUMMARY

Mambo, LLC, is launching a Spanish-language network program service that targets Hispanic viewers of Latin American, non-Mexican descent. The Network Representation Rule, Section 73.658(i) of the Commission's Rules, generally prohibits a broadcast television affiliate (other than a network O&O) from being represented by its network in the sale of non-network advertising. Mambo seeks a waiver of that rule to enable it to represent its affiliates in the sale of non-network advertising.

Mambo's network will *enhance* program diversity and competition among Spanish-language programming services. Without a waiver, Mambo will be greatly hindered in its ability to compete with the larger, more entrenched Univision, Telemundo, and Azteca Networks, each of which has been granted a permanent waiver of Section 73.658(i). The sale of advertising time on Spanish-language stations is also dominated by those entrenched networks, and Spanish-language stations already face the challenges of a marketplace where advertisers generally pay more for advertising on English-language stations than on Spanish-language stations. Moreover, Mambo's affiliates and many rep firms are, generally, inexperienced in the sale of time on a Spanish-language program service.

Grant of the requested waiver would neither frustrate the public interest nor create countervailing harms. Instead, a waiver would put Mambo on a more competitive footing with the entrenched Spanish-language networks Univision, Telemundo, and Azteca, and would also put Mambo's affiliates on a more competitive footing with the affiliates of those networks. Thus, grant of Mambo's waiver request would encourage the growth and development of new networks, foster foreign language programming, increase programming diversity, and enhance competition among stations.

Moreover, it would be arbitrary and capricious to treat Mambo any differently in this respect from the Spanish-language networks to which the Commission has already granted permanent waivers. Mambo is similarly situated to those networks and the instant request is factually indistinguishable from those underlying the previously granted waivers. Accordingly, Mambo requests comparable regulatory treatment.

Furthermore, Mambo states that it will assert no control over its affiliates' advertising rates or programming decisions and Mambo believes the affiliates themselves wish to take advantage of the assistance that Mambo's sales team can provide.

* * *

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:

Mambo, LLC

Petition for Waiver of Section 73.658(i)
of the Commission's Rules

MB Docket No. 10-_____

To: The Chief, Media Bureau

PETITION FOR WAIVER

I. Introduction and Background

Mambo, LLC ("Mambo"), pursuant to Section 1.3 of the Commission's Rules, through its undersigned counsel, hereby respectfully requests a waiver of Section 73.658(i) of the Commission's Rules.¹ Section 73.658(i), commonly known as the "Network Representation Rule," provides:

No license shall be granted to a television broadcast station which is represented for the sale of non-network time by a network organization or by an organization directly or indirectly controlled by or under common control with a network organization, if the station has any contract, arrangement or understanding, express or implied, which provides for the affiliation of the station with such network organization: *Provided, however,* That this rule shall not be applicable to stations licensed to a network organization or to a subsidiary of a network organization.²

By its terms, the Network Representation Rule generally prohibits a broadcast television affiliate (other than a network O&O) from being represented by its network in the sale of non-network

¹ See 47 C.F.R. §§ 1.3, 73.658(i).

² 47 C.F.R. § 73.658(i).

advertising, i.e., advertising sold by the station and aired locally either during non-network programming or during those periods of time within network programming that are devoted to advertising use by the affiliate.

While the Network Representation Rule is directed to station licensees, it effectively prohibits a “network organization”—defined for purposes of the rule as “any organization that provides an identical program to be broadcast simultaneously by two or more interconnected stations”—from representing non-owned affiliates in the national non-network spot advertising sales market.³ When it was promulgated a half-century ago, the rule sought to curb “the potential power and ability of the [then-existing] television networks to restrain competition.”⁴ The Commission was concerned with “the relationship between networks and their affiliates during the periods of greatest potential competition between them: commercial time sold during network programming.”⁵ Despite the lack of any actual evidence of anticompetitive behavior, the Commission adopted the Rule both as a preventative measure to guard against the possibility that networks would unduly influence affiliate programming decisions and as a means of furthering competition in the national television advertising market.⁶

³ 47 C.F.R. § 73.658(i).

⁴ *Amendment of Section 73.658(i) of the Commission's Rules, Concerning Network Representation of TV Stations in National Spot Sales; Request of Spanish International Network (SIN) for Waiver of Section 73.658(i)*, Further Notice of Proposed Rulemaking, 3 FCC Rcd 2746 (1988), at ¶ 6.

⁵ *See In the Matter of Review of the Commission's Regulations Governing Broadcast Television Advertising*, Notice of Proposed Rulemaking, 10 FCC Rcd 11853 (1995), at ¶ 6.

⁶ *See id.* at ¶ 10 (finding that the “rule protects broadcast affiliates from the networks^[1] exerting influence over affiliate programming decisions, and [it] fosters competition in the local and national broadcast television markets”).

II. GenTV and the Spanish-Language Television Network Programming Market

Mambo is launching a new national Spanish-language television broadcast network named GenTV. The development of this new program service, which provides a truly unique Spanish-language programming service by targeting Hispanic viewers primarily of *non-Mexican descent*, will be facilitated by a grant of the instant Petition. The GenTV network will *enhance*—rather than impede—program diversity and competition among Spanish-language programming services. Indeed, in the absence of a waiver, GenTV will not be able to compete with the larger, more entrenched Univision, Telemundo, and Azteca Networks, each of which has been granted a permanent waiver of Section 73.658(i).⁷

GenTV is currently negotiating or has entered into network affiliation agreements with several stations in multiple markets, and it appears that GenTV's first non-O&O affiliate will commence broadcast of the GenTV network program service in the spring of 2010. GenTV's Spanish-language programming targets the specific needs and interests of the ever-growing Hispanic population, especially viewers with cultural origins and connections to non-Mexican Latin American countries. GenTV offers unique programming—the vast majority of which is unavailable from any other program service—including live public affairs programming, live and pre-recorded entertainment programming, news, and children's programming directed to the needs and interests of Hispanics of non-Mexican descent. *See Declaration of Luis Calle, ¶ 2 (attached hereto).*

⁷ We note that the new Spanish-language network, Estrella, filed a similar Network Representation Rule waiver request in June 2009. In October 2009, the Commission sought comment on Estrella's waiver request. *See Comment Dates Established for Estrella TV Petition for Waiver of 47 C.F.R. § 73.658(i), the Network Representation Rule*, Public Notice, 24 FCC Red 12925 (2009). The comment period in that proceeding closed in early December 2009, and, according to the Commission's electronic comment filing system (ECFS), no comments were filed in opposition to Estrella's request. That request remains pending as of the filing date of the instant Petition.

The program interests of Spanish-speaking viewers are not all alike. Much of the programming provided by other Spanish-language networks is largely directed to Hispanic viewers of *Mexican descent*. As a result, the program needs and interests of the non-Mexican Latin American population in the United States are underserved. The GenTV network will address this programming niche by providing programming that targets viewers of non-Mexican Latin American descent, including those of Cuban, Venezuelan, and Colombian descent.

In addition to providing specialized programming to an underserved ethnic population, GenTV will bring new competition to the Spanish-language television programming market, which, historically has been dominated by Univision and Telemundo. Univision reaches approximately 97% and Telemundo 93% of Hispanic television households.⁸ Telefutura (which is owned by Univision) and Azteca TV follow, with approximately 85%⁹ and 89%¹⁰ coverage respectively. Estrella TV now reaches approximately 68% of Hispanic households in the United States.¹¹ In addition to its expansive coverage of Hispanic television households, Univision enjoys unparalleled success in terms of advertising market share, “raking in as much as 80% of

⁸ See *Lieberman's Estrella TV Signs Up Texas Affiliates*, Hispanic Market Weekly, Feb. 9, 2009, available at <http://www.lbimedia.com/Media/PressReleases/20090209Hispanic.pdf>.

⁹ See *id.*

¹⁰ Press Release, *DIRECTV to Launch Azteca México (AZM): Exclusive Channel Will Air Nationally on DIRECTV Más Channel 442* (June 5, 2009), available at <http://www.hispanicprwire.com/news.php?l=in&id=11668>.

¹¹ Press Release, *Estrella TV Makes Its Nationwide Debut: Pioneering Hispanic Broadcaster Extends Its Reach to 68 Percent of U.S. Hispanic Households* (Sept. 14, 2009), available at <http://www.hispanicprwire.com/news.php?l=in&id=15475>.

all the nearly \$2 billion spent each year”¹² of Hispanic television advertising dollars. Given these market shares, Mambo confronts a daunting economic challenge—at best—in launching a new, competitive network.

Broadcast television stations that air a Spanish-language program service already labor to compete with English-language stations for advertising dollars, because, as at least one commentator has observed, advertisers generally are willing to pay more to reach English-speaking viewers than Spanish-speaking viewers.¹³ Consequently, broadcasters who target Hispanic viewers earn less revenue on a per-viewer basis than broadcasters who air general audience programming.¹⁴ Moreover, when minority-owned stations, which may include stations offering a Spanish-language program service, experience discrimination in advertising sales—which has been estimated to cost minority broadcasters approximately \$200 million annually¹⁵—the ability of such stations to compete for national advertising revenue is compromised from the outset.

¹² Laura Martinez, *Univision Stars in Its Own Soap Opera*, Broadcasting & Cable, Dec. 8, 2008, available at http://www.broadcastingcable.com/article/print/160357-Univision_Starts_in_Its_Own_Soap_Opera.php.

¹³ See Catherine J.K. Sandoval, *Antitrust Language Barriers: First Amendment Constraints on Defining an Antitrust Market by a Broadcast's Language, and its Implications for Audiences, Competition, and Democracy*, 60 FED. COMM. L.J. 407, 439 (2008).

¹⁴ See Kofi Asiedu Ofori, *When Being No. 1 Is Not Enough: The Impact of Advertising Practices On Minority-Owned & Minority-Formatted Broadcast Stations*, Synopsis (2003), available at http://www.fcc.gov/Bureaus/Mass_Media/Informal/ad-study/adsynopsis.html (last visited February 11, 2010).

¹⁵ *In the Matter of Promoting Diversification of Ownership in the Broadcasting Services*, Notice of Ex Parte Communication of Minority Media & Telecommunications Council, MB Docket No. 07-294, at 1 (filed July 3, 2008).

III. The Commission Has Previously Granted Permanent Waivers of the Network Representation Rule to Univision, Telemundo, and Azteca

In 1990, the Commission granted a permanent waiver of the Network Representation Rule to the two largest Spanish-language networks, Univision and Telemundo.¹⁶ The Commission had previously granted a temporary waiver to Univision in 1978¹⁷ and to Telemundo in 1987.¹⁸ In determining that the temporary waivers should become permanent, the FCC emphasized that the temporary waivers had fostered competition, diversity, and growth in the market. The Commission observed that

had [the FCC] not waived the network representation rule in 1978, the development of the above referenced new foreign-language programming services would have been hampered, if not stifled completely, an outcome clearly inconsistent with the public interest.¹⁹

Additionally, the Commission found that the temporary waivers

continue to provide additional benefits in that they further several of the Commission's longstanding goals: encouraging the growth and development of new networks; fostering foreign-language programming; increasing programming diversity; strengthening

¹⁶ See *Amendment of § 73.658(i) of the Commission's Rules, Concerning Network Representation of TV Stations in National Spot Sales; Request of Spanish International Network (SIN) for Waiver of § 73.658(i); Request of Telemundo Group, Inc. for Waiver of § 73.658(i); Request of Latin International Network Corporation for Waiver of § 73.658(i)*, Report and Order, 5 FCC Rcd 7280 (1990), at ¶¶ 7-12 ("Network Representation Order"). Another Spanish-language network, "Latin International Network Corporation" or "Latinet," also received a temporary waiver at that time.

¹⁷ See *Network Representation of TV Stations in National Spot Sales; Request for Spanish International Network (SIN)*, FCC 78-682, 43 Fed. Reg. 45,895 (1978), at ¶ 18(b). (Univision's name at the time was "Spanish International Network.")

¹⁸ See *Network Representation Order*, ¶ 2 n.5.

¹⁹ *Id.* at ¶ 12.

competition among stations; and fostering a competitive UHF service.²⁰

Then, in 2003, the Commission granted a permanent waiver of the Network Representation Rule to Azteca—a then-fledgling Spanish-language television programming network. In making its determination, the Commission cited the same reasons that had motivated the 1990 waiver grants to Univision and Telemundo—namely, that (1) a new Spanish-language network would be significantly “hampered, if not stifled completely,” absent a waiver and (2) the public has positively benefited from such waivers in the past.²¹ In its 2003 *Azteca* decision, the Commission reiterated assertions made by Univision and Telemundo in the 1990 waiver proceeding, that “traditional national sales firms lack ‘the specialized skill and experience required to market successfully Spanish-language television,’” and “Spanish-language stations ‘cannot themselves effectively secure national spot advertising sales.’”²² The Commission agreed that Azteca affiliates were “suffer[ing] from the same competitive handicaps that were found to justify waivers of the rule for Univision and Telemundo” and, accordingly, granted a permanent waiver of the Network Representation Rule.²³

IV. Good Cause Exists for the Requested Waiver

Section 1.3 of the Commission’s Rules provides that the Commission may waive its rules if “good cause” for waiver is shown.²⁴ A waiver is permissible upon demonstration that the

²⁰ *Id.* (footnotes and internal citations omitted).

²¹ *Azteca International Corporation (Azteca International) Petition for Waiver of Section 73.658(i) of the Commission’s Rules*, Order, 18 FCC Rcd 10662 (2003) (“*Azteca*”), at ¶ 3.

²² *Id.* (quoting *Network Representation Order*, ¶¶ 8-9).

²³ *Azteca*, ¶ 5.

²⁴ 47 C.F.R. § 1.3.

underlying purpose of the rule would not be served, or would be frustrated, upon rigid adherence to the rule.²⁵ That is, “where particular facts would make strict compliance inconsistent with the public interest,”²⁶ a waiver should be granted. Even if a rule has been “deemed valid because its overall objectives are in the public interest,” it may not be “in the ‘public interest’ if extended to an applicant who proposes a new service that will not undermine the policy, served by the rule, that has been adjudged in the public interest.”²⁷ Mambo respectfully submits that enforcement of the Network Representation Rule against affiliates of GenTV (or the network itself) would not serve the underlying policy objective of the Rule and would be inconsistent with the public interest.²⁸

First, as discussed in the attached Declaration of Luis Calle, Mambo believes that the success of GenTV as a Spanish-language network depends, in part, on its ability to represent its affiliates in the sale of non-network time. See Calle Declaration, ¶ 3. Absent a waiver, GenTV—and, in turn, each of its affiliates as further discussed below—will be greatly hindered from competing in an advertising market dominated by players that have long been operating free from the constraints imposed by the Network Representation Rule. As a new network seeking to provide unique programming choices to Hispanic television viewers, GenTV will increase competition in the Spanish-language television programming market. Significantly,

²⁵ See, e.g., *In the Matter of Petition for Waiver of Section 20.18(G)(1)(IV) of the Commission’s Rules*, Order, DA 10-139, 2010 WL 301876, *1 (Jan. 26, 2010).

²⁶ *AT&T Corp. v. FCC*, 448 F.3d 426, 433 (D.C. Cir. 2006) (quoting *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

²⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969):

²⁸ See *id.*, 418 F.2d at 1159 (“[A] rule is more likely to be undercut if it does not in some way take into account considerations of hardship, equity, or more effective implementation of overall policy, considerations that an agency cannot realistically ignore, at least on a continuing basis. The limited safety valve permits a more rigorous adherence to an effective regulation.”)

GenTV's competitors—Univision, Telemundo, and Azteca—have each received a permanent waiver, which means these competitors will continue to operate free from the Rule's constraints for the indefinite future. A fourth competitor, Estrella TV, currently has pending a request for waiver of the Rule, which appears to be unopposed.²⁹ In requesting the waiver, Mambo merely seeks to level the playing field between it and the Spanish-language programming networks that constitute GenTV's primary competition.

The Commission has already determined that waiver of the Network Representation Rule has fostered industry competition, a public interest of paramount importance, and that "had [the FCC] not waived the network representation rule" as to Univision and Telemundo, their "development of new foreign language programming services would have been hampered, if not stifled completely."³⁰ The current situation is the same for Mambo and its GenTV program service, especially considering the recent economic downturn and industry-wide budget cuts in television advertising expenditures.³¹ Moreover, the Commission's previous conclusion that allowing a network to fail—whether as a result of the affect of the Network Representation Rule

²⁹ See *supra* note 7.

³⁰ *Network Representation Order*, ¶ 12.

³¹ See Claire Atkinson, *If the Worst is Over, When Does it Get Better?*, BROADCASTING & CABLE, July 14, 2009, available at http://www.broadcastingcable.com/blog/ADverse_Atkinson_on_Advertising/18744-If_the_Worst_Is_Over_When_Does_It_Get_Better_.php; Claire Atkinson, *Upfront 2009: The Correction Year*, BROADCASTING & CABLE, July 8, 2009, available at http://www.broadcastingcable.com/blog/ADverse_Atkinson_on_Advertising/18653-Upfront_2009_The_Correction_Year.php; see also, e.g., Brian Stelter & Bill Carter, *ABC News to Cut Hundreds of Staff*, N.Y. TIMES, Feb. 23, 2010, available at <http://www.nytimes.com/2010/02/24/business/media/24abc.html?scp=1&sq=abc%20news%20layoffs&st=cse> (reporting ABC News' plans to cut roughly 25% of its news division's work force in an effort to "get ahead of economic pressures squeezing the broadcast business" – pressures stemming from "the realities of broadcast versus digital [. . . and] the advertising market").

or otherwise—would be “clearly inconsistent with the public interest”³² is especially apt here and counsels in favor of granting the waiver request. In short, grant of the waiver to Mambo will “encourag[e] the growth and development of new networks; foster[] foreign language programming; increase[] programming diversity; [and] strengthen[] competition among stations.”³³

Second, absent a waiver, GenTV affiliates would be competitively disadvantaged in competing with affiliates of the above-referenced Spanish-language networks who are free to obtain national spot sales advertising representation from their own networks pursuant to the waivers those networks have received. As observed in the Declaration of Luis Calle, Mambo believes that many GenTV affiliates lack the experience and resources to market themselves successfully to advertisers who seek time on Spanish-language channels and to overcome the presence of the well-established Spanish-language networks in that market. See Calle Declaration, ¶ 3. Because traditional sales firms focus principally on selling spots for English-language program services, many of those rep firms lack the expertise necessary to effectively pitch advertisers on the benefits of advertising on Spanish-language program services—this reality effectively limits the number of options that GenTV’s affiliates will have for representation in the sale of advertising. Moreover, as noted above, advertisers generally pay less for spots on Spanish-language stations than they do on English-language stations. Allowing

³² *Network Representation Order*, at ¶ 12; see also *Amendment of Section 73.658(g) of the Commission’s Rules – the Dual Network Rule*, 16 FCC Rcd 11114 (2001), ¶¶ 34-35 (eliminating the prohibition on a merger between one of the “big four” networks and UPN or WB, due in part to the fact that the emerging networks were struggling financially and might well have failed, which would have harmed local diversity); *Petition of ACS of Anchorage, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007), at ¶ 69 (observing that regulatory parity between competitors is in the public interest).

³³ *Network Representation Order*, ¶12 (footnotes and citation omitted).

Mambo to represent its affiliates in the sale of non-network advertising, including the national spot sales market, will help to balance some of these disadvantages, which will, in turn, help ensure the economic health and competitive standing of GenTV's affiliates.

Moreover, in making its determination, the Commission must consider the importance and necessity of treating similarly-situated parties alike. This principle is a well-established tenet of administrative law—recognized repeatedly by the D.C. Circuit³⁴—and the Administrative Procedure Act requires agencies to “provide an adequate explanation before [they] treat[] similarly situated parties differently.”³⁵ Aside from Estrella TV's pending petition for a waiver,³⁶ the Commission appears to have granted a permanent waiver of the Network Representation Rule to every Spanish-language television programming network that has requested it. Furthermore, Commission precedent applying regulatory parity to ensure a level

³⁴ See *Burlington Northern & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 776-77 (D.C. Cir. 2005) (internal citations omitted) (“An agency must provide an adequate explanation to justify treating similarly situated parties differently. Where an agency applies different standards to similarly situated entities and fails to support this disparate treatment with a reasoned explanation and substantial evidence in the record, its action is arbitrary and capricious and cannot be upheld.”); see also *Independent Petroleum Ass'n v. Babbitt*, 92 F.3d 1248, 1260 (D.C. Cir. 1996) (“An agency cannot meet the arbitrary and capricious test by treating type A cases differently from similarly situated type B cases . . . The treatment . . . must be consistent. That is the very meaning of the arbitrary and capricious standard.”), *aff'd*, 235 F.3d 588 (2001); accord *FEC v. Rose*, 806 F.2d 1081, 1089 (D.C. Cir. 1986) (“[A]n agency's unjustifiably disparate treatment of two similarly situated parties works a violation of the arbitrary-and-capricious standard.”).

³⁵ *Chadmoore Communications, Inc. v. FCC*, 113 F.3d 235, 242 (D.C. Cir. 1997); see also *Adams Telecom, Inc. v. FCC*, 38 F.3d 576, 581 (D.C. Cir. 1994) (citing *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965)) (determining the FCC must “do more than enumerate factual differences, if any, between appellant and other cases; it must explain the relevance of those differences to the purposes of the Federal Communications Act”).

³⁶ *In re Liberman Television LLC Petition for Waiver of Section 73.658(i) of the Commission's Rules*, Petition, MB Docket No. 09-192 (filed June 29, 2009).

playing field³⁷ and to “minimize marketplace distortions arising from regulatory advantage”³⁸ supports a grant of Mambo’s request. Indeed, a failure to grant the requested waiver, which is factually indistinguishable from requests previously granted, would be arbitrary and capricious to the extent it would favor one similarly-situated party over another and bestow a regulatory advantage to entrenched Spanish-language networks and their affiliated stations.

Finally, grant of the requested waiver would neither frustrate the public interest nor create countervailing harms. Indeed, as set forth in Mr. Calle’s Declaration, Mambo states that it will assert no control over GenTV affiliate advertising rates or programming decisions and Mambo believes the affiliates themselves wish to take advantage of the assistance that Mambo’s sales team can provide.

V. Conclusion

In consideration of the foregoing, “good cause” clearly exists for grant of Mambo’s request for permanent waiver of the Network Representation Rule. Additionally, Mambo respectfully requests grant of a temporary waiver of the Network Representation Rule while its request for a permanent waiver remains under consideration consistent with the Commission’s grant of interim waivers to Univision and Telemundo while their permanent waiver requests

³⁷ See, e.g., *In the Matter of Petition for Extension of Terms for 220-222 MHz Band Phase I Nationwide Licenses Held by Access 220 LLC (WPFP444 and WPFR 284) and Other Relief or, Alternatively, for Renewal of Licenses*, Memorandum Opinion and Order, 21 FCC Rcd 11883 (2006), at ¶ 48 (explaining the Commission’s commitment to “ensur[ing] regulatory parity” within wireless markets in order to “promote competition . . . by enhancing all such carriers’ abilities to compete”).

³⁸ *Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007), at ¶17; see also *Promotion of Competitive Networks in Local Telecommunications Markets*, Report and Order, 23 FCC Rcd 5385 (2008), at ¶ 5 (discussing the importance of regulatory parity in the Commission’s determination to remove impediments to fair competition).

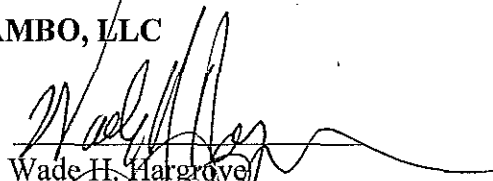
were pending.³⁹ Grant of a similar interim temporary waiver to Mambo would place GenTV and its affiliates on equal footing with their competitors while this new Spanish-language television programming network is being launched.

For the foregoing reasons, Mambo respectfully requests that it be granted a permanent waiver of Section 73.658(i) of the Commission's Rules or, alternatively, a temporary waiver pending a final decision on its permanent waiver request.

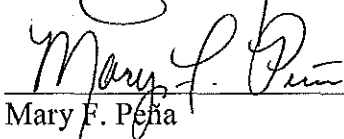
Respectfully submitted,

MAMBO, LLC

By:


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March 4, 2010

³⁹ See *supra* p. 7.

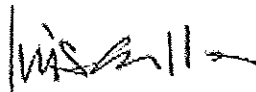
DECLARATION OF LUIS CALLE

I, Luis Calle, declare the following:

1. I am competent to make this declaration, and I am more than eighteen years of age. I am Vice President of Operations of Mambo, LLC, and I am a member of Mambo, LLC's Board of Supervising Managers. I have held these positions at all relevant times.
2. Mambo is launching a new national Spanish-language television broadcast network named GenTV. The GenTV program service provides Spanish-language programming and targets Hispanic viewers primarily of non-Mexican descent, especially viewers with cultural origins and connections to non-Mexican Latin American countries. GenTV offers unique programming—the vast majority of which is unavailable from any other program service—including live public affairs programming, live and pre-recorded entertainment programming, news, and children's programming.
3. We believe that the success of GenTV as a Spanish-language network depends, in part, on our ability to represent GenTV affiliates in the sale of non-network time. We believe that many of our affiliates lack the experience and resources to market themselves successfully to advertisers who wish to purchase advertising time on Spanish-language channels, which will make it difficult for GenTV affiliates to overcome the presence of well-established Spanish-language networks in that market. Based on our discussions with affiliates and potential affiliates, we believe that GenTV affiliates want Mambo to represent them in the sale of non-network advertising time and wish to take advantage of the sales assistance we can provide. If the Commission grants our waiver request, Mambo will assert no control over GenTV affiliate advertising rates or programming decisions.
4. I have reviewed the foregoing Petition for Waiver of the Network Representation Rule, Section 658(i) (the "Petition"). All information and statements contained in the Petition are true and correct to the best of my knowledge and belief.

[signature on following page]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 02, 2010.

A handwritten signature in black ink, appearing to read 'Luis Calle', written over a horizontal line.

Luis Calle
Vice President of Operations
Mambo, LLC